

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANGELA DOTTEI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56359

FILED

DEC 13 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of four counts of embezzlement of an elderly victim and one count of embezzlement. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

First, appellant Angela Dottei contends that the district court erred in its determination of the restitution award because (1) no documentation was submitted in support of the amount other than that provided in the presentence investigation report prepared by the Division of Parole and Probation and (2) the total should be reduced by the amount she properly earned in her capacity as a guardian. We disagree.

A district court must rely on reliable and accurate information in calculating a restitution award and its determination will not be disturbed on appeal absent an abuse of discretion. See Martinez v. State, 115 Nev. 9, 12-13, 974 P.2d 133, 135 (1999); see also NRS 176.033(1)(c). At the sentencing hearing, Dottei did not challenge the reliability or accuracy of the information provided in the PSI pertaining to the restitution calculation; in fact, her only argument was that the Division's

recommendation should be reduced by her properly earned guardian fees. See Davis v. State, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991) (this court need not consider arguments raised on appeal that were not presented to the district court in the first instance), overruled on other grounds by Means v. State, 120 Nev. 1001, 103 P.3d 25 (2004); see also Ford v. Warden, 111 Nev. 872, 884, 901 P.2d 123, 130 (1995) (an appellant “cannot change [his] theory underlying an assignment of error on appeal”). Additionally, Dottei admitted that the issue of her fees was essentially a civil matter and “exclusively a question before Judge Hardy in the guardian’s court.” See generally NRS 159.183; NRS 159.1873-.1877. We agree and conclude that the district court did not abuse its discretion.

Second, Dottei contends that the district court exceeded its authority by ordering her to sign a confession of judgment for each recipient of the restitution award. See generally NRS 176.033(1)(c) (providing that, if appropriate, the district court shall “set an amount of restitution for each victim of the offense and for expenses related to extradition”). But see NRS 176A.400(1); NRS 176A.430(1). In response, “[t]he State tends to agree.” We also agree and conclude that there is no statutory authority or support in this court’s case law providing a district court with the discretion to order a defendant sentenced to a term of imprisonment to sign a civil confession of judgment. Therefore, we reverse that part of the judgment of conviction and, on remand, direct the district court to vacate the confessions of judgment and enter an amended judgment of conviction correcting the error.

Third, Dottei contends that the district court violated NRS 193.167(3) and Mendoza-Lobos v. State, 125 Nev. ___, 218 P.3d 501 (2009), because its findings do not support its sentencing determination. Dottei

did not object below to the sufficiency of the district court's findings or the imposition of the elderly victim enhancements and we conclude that she has failed to demonstrate plain error. See Puckett v. United States, 556 U.S. ___, 129 S. Ct. 1423, 1428-29 (2009); Mendoza-Lobos, 125 Nev. at ___, 218 P.3d at 507-08.

Having considered Dottei's contentions, we

ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Patrick Flanagan, District Judge
Attorney General/Carson City
Washoe County District Attorney
Washoe County Public Defender
Washoe District Court Clerk